

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KYLE SMITH	:	
	:	CIVIL ACTION - LAW
	:	
v.	:	
	:	No. 02-CV-2718 (RLB)
PROMARK PRODUCTS WEST, INC.	:	
	:	
and	:	
	:	
ARIENS COMPANY	:	
	:	

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2004, upon consideration of the Motion of Defendant, Ariens Company, to Compel Discovery, and any response thereto, it is hereby ORDERED that plaintiff is to provide full and complete answers to both the Request for Production of Documents and Interrogatories Set-I of Ariens Company within ten (10) days of the date of this order.

BY THE COURT:

\_\_\_\_\_  
HONORABLE RONALD L. BUCKWALTER  
United States District Court Judge

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KYLE SMITH	:	
	:	CIVIL ACTION - LAW
	:	
v.	:	
	:	No. 02-CV-2718 (RLB)
PROMARK PRODUCTS WEST, INC.	:	
	:	
and	:	
	:	
ARIENS COMPANY	:	
	:	

**MOTION OF DEFENDANT, ARIENS COMPANY,  
TO COMPEL PLAINTIFF'S RESPONSES TO DISCOVERY**

Defendant, Ariens Company, through its attorneys, Lavin, Coleman, O'Neil, Ricci, Finarelli & Gray, moves this Honorable Court pursuant to Federal Rule of Civil Procedure 37(a)(2)(B) and Local Civil Rule 26.1 for an order compelling answers to its discovery requests and in support thereof states as follows:

1. Ariens Company (hereinafter "Arines") forwarded a Request for Production of Documents and Interrogatories Set I to plaintiff's counsel by correspondence dated August 19, 2003. A true and correct copy of the Correspondence from Leland I. Kellner, Esquire, to S. Richard Klinges, Esquire, dated August 19, 2003 is attached hereto as Exhibit "A."

2. To date, plaintiff has not responded.

3. Federal Rule of Civil Procedure 37(a), in pertinent parts, provides:

"A party, upon reasonable notice to other parties . . . may apply for an order compelling disclosure or discovery . . . (2)(B) . . . if a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection, the discovering party may move for and order compelling an answer . . . or an order compelling inspection in accordance with the request. "

4. Local Civil Rule 26.1(f) provides:

“No motion or other application pursuant to the Federal Rules of Civil Procedure governing discovery or pursuant to this rule shall be made unless it contains a certification of counsel that the parties, after reasonable effort, are unable to resolve the dispute.” See also F.R.Civ.P. 37(a)(2)(B).

5. Despite the attempts of Ariens to compel plaintiff's response without judicial intervention, plaintiff has not provided any responses to the outstanding discovery, nor has he provided any reason why he has not provided any responses to this discovery. See Correspondence from Leland I. Kellner, Esquire, to S. Richard Klinges, Esquire, dated February 5, 2004, a true and correct copy of which is attached hereto as Exhibit “B.”

6. Ariens has been unduly prejudiced by plaintiff's failure to comply with discovery requests in this case. Ariens lacks sufficient information to respond to plaintiff's allegations. Without plaintiff's responses to the outstanding discovery, Ariens cannot prepare an adequate defense in this case.

7. A court order compelling plaintiff to respond to all outstanding discovery requests is, therefore, necessary.

WHEREFORE, it is respectfully requested that this Honorable Court enter an order compelling

plaintiff to provide full and complete answers to both the Request for Production of Documents and Interrogatories Set I of Ariens Company within ten (10) days of the Court's Order.

Respectfully submitted,

LAVIN, COLEMAN, O'NEIL, RICCI, FINARELLI & GRAY

DATE: \_\_\_\_\_

BY: \_\_\_\_\_ (GC1270)

Gerard Cedrone, Esquire  
Leland I. Kellner, Esquire  
Howard W. Donahue, Jr., Esquire  
Attorneys for Defendant,  
Ariens Company

**CERTIFICATION OF SERVICE**

I, Gerard Cedrone, Esquire, hereby certify that a true and correct copy of the within Motion of Defendant, Ariens Company, to Compel was forwarded to counsel identified below, by first-class U.S. mail, postage pre-paid, on February 11, 2004:

S. Richard Klinges, Esq.  
Begley, Carlin & Mandio, LLP.  
680 Middletown Blvd.  
Langhorne, PA 19047  
*Attorney for Plaintiff, Kyle Smith*

LAVIN, COLEMAN, O'NEIL, RICCI, FINARELLI & GRAY

BY: \_\_\_\_\_  
Gerard Cedrone, Esquire  
510 Walnut Street, Suite 1000  
Philadelphia, PA 19106  
(215) 627-0303  
Attorney for Defendant,  
Ariens Company

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KYLE SMITH	:	
	:	CIVIL ACTION - LAW
	:	
v.	:	
	:	No. 02-CV-2718 (RLB)
PROMARK PRODUCTS WEST, INC.	:	
	:	
and	:	
	:	
ARIENS COMPANY	:	
	:	

**CERTIFICATION OF COUNSEL**

Counsel for defendant, Ariens Company, certifies that after reasonable effort the parties are unable to resolve this discovery dispute

LAVIN, COLEMAN, O'NEIL, RICCI, FINARELLI & GRAY

BY: \_\_\_\_\_ (GC1270)

Gerard Cedrone, Esquire  
Leland I. Kellner, Esquire  
Howard W. Donahue, Jr., Esquire  
510 Walnut Street, Suite 1000  
Philadelphia, PA 19106  
(215) 627-0303  
Attorneys for Defendant,  
Ariens Company